

REMARKS

Claims 1, 2, and 4 to 17 are pending in this application and stand rejected. Applicant requests reconsideration and withdrawal of the rejections, as discussed more fully below.

Preliminary Matter regarding Information Disclosure Statement

Applicant requests the Office to acknowledge review of EP-A2-0,820,183 submitted on the Form PTO-1449 mailed August 26, 2004 by initialing the entry.

Rejection under 35 U.S.C. § 102(e)

Claims 1, 2, and 5 to 17 are rejected under 35 U.S.C. § 102(e) as anticipated by US 2002/0010769 (hereinafter referred to as the "Kippenhan Application"). Applicant traverses the rejection because the Office has not established that the Kippenhan Application has a 102(e) date that pre-dates the earliest effective filing date of the instant application.

The instant application was filed on May 14, 2001 and claims the benefit of earlier filed U.S. Application No. 60/204,606, filed *May 16, 2000*.

The Kippenhan Application has a filing date of *January 23, 2001* and claims the benefit of two earlier applications (U.S. Application No. 60/216,472, filed *July 6, 2000* and U.S. Application No. 09/338,912, filed *June 23, 1999*). The Kippenhan Application is only entitled to the benefit of the filing date of these earlier applications under 35 U.S.C. § 119(e) and under 35 U.S.C. § 120, respectively, *if the earlier applications properly support the subject matter relied upon to make the rejection* in compliance with 35 U.S.C. 112, first paragraph (MPEP § 2136.03). The subject matter of U.S. Application No. 60/216,472 having a filing of July 6, 2000 is *not* earlier enough to establish an effective 102(e) date before the earliest priority date of the subject application of May 16, 2000. Applicant further submits that the Office has *not* established that U.S. Application No. 09/338,912 filed June 23, 1999 properly supports the subject matter relied upon to make the rejection in compliance with 35

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U.S.C. 112, first paragraph. Accordingly, since the Office has not established that the Kippenhan Application is a proper 102(e) reference and without conceding the merits otherwise of the rejection, applicant respectfully requests that the rejection of claims 1, 2, and 5 to 17 under 35 U.S.C. § 102(e) as anticipated by the Kippenhan Application be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claim 4 is rejected under 35 U.S.C. § 103(a) as obvious over the Kippenhan Application in view of US-B-6,185,198 (hereinafter "the LaDue Patent"). Applicant traverses the rejection because the Office has not established that the Kippenhan Application is a proper 102(e) reference and as such cannot support an obviousness rejection in combination with any secondary reference.

Because the Kippenhan Application is not a proper 102(e) reference and without conceding the merits otherwise of the rejection, applicant respectfully requests that the rejection of claim 4 under 35 U.S.C. § 103(a) as obvious over the Kippenhan Application in view of the LaDue Patent be withdrawn.

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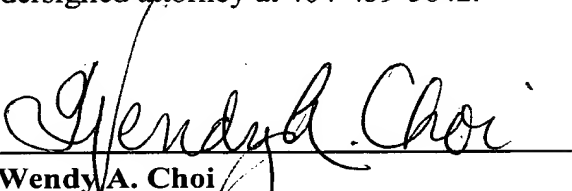
Conclusions

Applicant respectfully requests:

- (1) acknowledgment that EP-A2-0,820,183 was considered by initialing copy of Form PTO-1449; and
- (2) reconsideration and withdrawal of the rejections of the claims.

If the Examiner believes a telephone conference would expedite prosecution of this application, the Examiner is invited to contact the undersigned attorney at 404-459-5642.

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